



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 19, 1992

Mr. Douglas A. Poneck  
Attorney at Law  
Escamilla, Poneck & Perez  
310 S. St. Mary's, Suite 2201  
San Antonio, Texas 78205

OR92-109

Dear Mr. Poneck:

On February 6, 1992, we received your request for an open records decision pursuant to section 7 of the Open Records Act, V.T.C.S. art. 6252-17a. Your request was assigned ID# 14886.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 7(a) to submit that request to the attorney general within 10 days to the governmental body's receipt of the request for information. The time limitation found in section 7 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.-Austin 1990, *no writ*). When a request for an open records decision is not made within the time prescribed by section 7(a), a heightened presumption of openness arises which can only be overcome by a compelling demonstration that the information should not be made public. *Id.*

However, we realize that the short time frame prescribed by section 7(a) may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On February 18, 1992, we asked you for copies of the requested documents, a brief explaining your exceptions under the Open Records Act, and a copy of the open records request. To date we have not received all of the requested information.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Without the information we requested of you, your request for an open records decision remains incomplete.

Consequently, this office cannot consider the exceptions to required public disclosure you raise regarding this request, and we are closing the file. Should you at some future date request that this matter be reopened and considered, we will not consider your request timely, and will consider all discretionary exceptions to required public disclosure waived unless you can demonstrate compelling reasons why the information should not be released. *Hancock, supra*. In the absence of such a compelling demonstration, we find that you have not met your burden under the heightened presumption of openness and must release the requested information.<sup>1</sup> If you have questions regarding this matter, please refer to OR92-.

Yours very truly,



Rick Gilpin  
Assistant Attorney General  
Opinion Committee

GK/RG/nhb

Ref.: ID# 14886

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<sup>1</sup>We note that some of the requested information may be withheld under section 3(a)(17) which excepts "the home addresses and home telephone numbers of each official and employee . . . of a governmental body." You must withhold the addresses and telephone numbers of employees who have complied with the provisions of section 3A of the Open Records Act. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 530 (1989) (A governmental body may not solicit a response from its employees under section 3A(b) in response to a pending open records request.)